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ABSTRACT

This document provides a basic structure for studying the public schools of North Carolina and the relationship that exists between county school systems and the State. The legal structure of public education is explained; a chart illustrates the organizational structure and outlines the responsibilities of State personnel in education. Financial information includes (1) the sources of support for public school expenditures 1965-66, and (2) the budget-making process. (MLF)

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PUBLIC EDUCATION

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16. PUBLIC EDUCATION

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16. PUBLIC EDUCATION

¶ 16.00. Introduction

No responsibility of a democratic government is more important than the education of its citizens. The essentialness of an informed and knowledgeable citizenry to our society is indicated by the North Carolina Constitution, which states: "Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools, and the means of education, shall forever be encouraged." The Constitution also states: "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right." Thus, education is recognized as the foundation for a viable democratic society and a service that the state is obligated to promote and protect for its citizens. To carry out these constitutional mandates, the State of North Carolina maintains a public school system and a system of higher education that includes community colleges, senior colleges, regional universities, and the Consolidated University. This chapter will consider primarily the public education system, since it is this aspect of the state's educational program that most directly affects boards of county commissioners.

Besides being the basis for a democratic system of government, the public school system is also the most expensive aspect of state and local government. At the local level, the schools receive from half to three-quarters of the entire county budget, and it is the board of commissioners that levies the taxes to raise most of this local money. These facts alone make the schools a major concern of the board of county commissioners and point out how important it is that county commissioners know a great deal about their county schools—their needs, limitations, and goals.

This chapter will attempt to provide a basic structure for studying the public schools and provide the commissioner with the information he needs

to relate to his county's school system. Knowledge about specific school problems of particular school systems, however, can be obtained only from the local school boards and local school officials, and county commissioners are urged to meet with their school boards at times other than the budget-presentation meeting, to visit schools, and to talk with school administrators about school problems and plans.

¶ 16.01. Public Education as a State Function

Public education is a function and responsibility of state government. The federal Constitution makes no mention of education. Therefore, by virtue of the Tenth Amendment to the U.S. Constitution, which reserves to the states or to the people those powers not delegated to the United States, the organization and operation of the public school system is left to the state and its political subdivisions.

The State of North Carolina did not accept the responsibility for a public school system early in its history. Education was considered a local matter, and the state's first schools were financed and operated by church groups.[1] Gradually, however, this attitude changed, and the education of its citizens came to be considered a fundamental obligation of government, but an obligation to be met primarily at the local level. In time the state began adding its resources to the support of public schools, and in 1933, during the hard days of the Depression, it took over most of the financial responsibility for the schools. Recognition of education as a responsibility of state government is indicated today in the North Carolina constitutional provisions that require the General Assembly to provide "for a general and uniform system of public schools." The Constitution further provides that these schools are to be maintained for at least six months in every year and are to be free to all the children of the state between the ages of six and twenty-one years. Thus the public school system in North Carolina is now considered both an obligation and a function of state government. School operation today is largely determined by state statutes and state regulations administered by the State Board of Education. School officials, officers, and teachers are employees of the state, and school funds and assets are state property. School boards are agents of the state and their power only as broad or limited as the state chooses to make it. The public school system is clearly a state school system.

¶ 16.02. The Legal Structure of Public Education in North Carolina

¶ 16.02(a). The State Structure of Education

• *State Board of Education.* The State Board of Education is a constitutional body. It is composed of thirteen members, three of whom are ex officio—the Lieutenant-Governor, the State Treasurer, and the State Super-

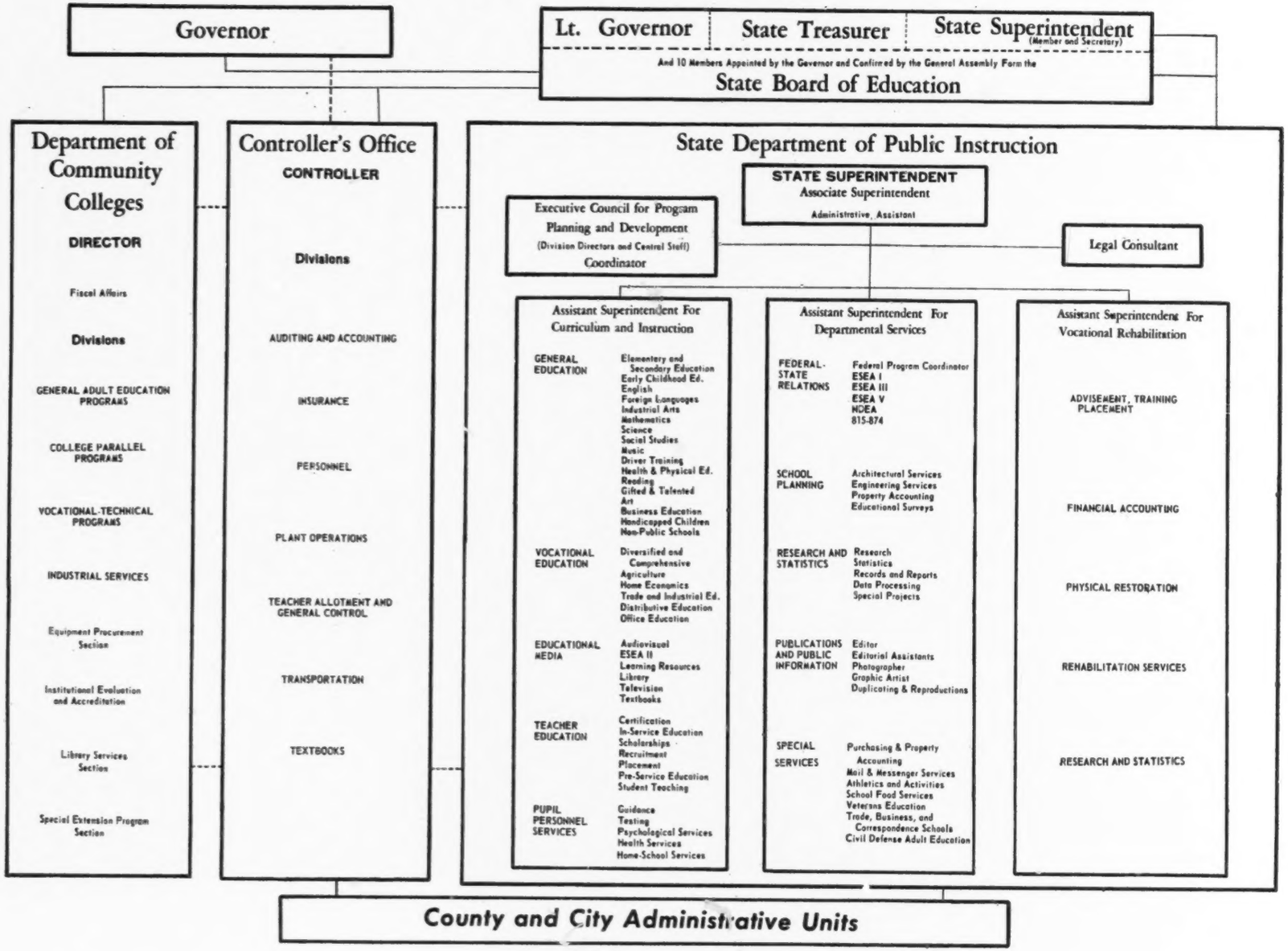
intendent of Public Instruction. The remaining ten are appointed by the Governor for staggered, eight-year terms subject to confirmation by the General Assembly.

The State Constitution makes the Board responsible for the general supervision and administration of the state's public school system.[2] Within this general obligation are included the constitutionally required duties of apportioning the public school funds among the school units of the state, adopting and supplying textbooks, certifying and regulating the grade and salary of teachers and other school employees, and promulgating rules and regulations for the operation of the school system. The statutory duties of the State Board of Education, which in part implement the constitutionally imposed responsibilities, are set out in G.S. 115–11. These provisions include the duty to appoint the controller and the authority to accept federal funds appropriated for the operation of the schools. In general, the State School Board is vested with the authority to maintain and operate North Carolina's schools.

• *State Superintendent of Public Instruction.* The State Superintendent of Public Instruction is a constitutional officer. He is elected by popular vote for a four-year term rather than appointed by the Governor or selected by the State School Board, as he is in most states. Thus the Superintendent is both a part of the State School Board and independent of it. This characteristic of his position is not found in many other states.

The State Constitution makes the Superintendent the administrative head of the state's public school system. As such, he has the responsibility for keeping the State Board of Education and the General Assembly informed of developments in public education and recommending needed legislation to both bodies. He is further authorized, by the General Statutes, to organize and establish a Department of Public Instruction and to include such divisions and departments as are necessary for the supervision and administration of the public school system. The Department has an Associate Superintendent under the State Superintendent and three Assistant Superintendents who are responsible for the various divisions of the Department. The Assistant Superintendent for Curriculum and Instruction is responsible for the following divisions: General Education, Vocational Education, Educational Media, Teacher Education, and Pupil Personnel Services. The Assistant Superintendent for Departmental Services is responsible for the following divisions: Federal-State Relations, School Planning, Research and Statistics, Publications and Public Information, and Special Services. The Assistant Superintendent for Vocational Rehabilitation is responsible for six divisions concerning the rehabilitation of disabled persons. (See Table 16–I on page 348 for a complete listing of staff services of the Department's divisions.) The Superintendent makes a biennial report on his Department to the Governor and the General Assembly. Through this Department the State Superintendent discharges his constitutional responsibility for executing and administering the policies promul-

Table 16–I. Organization Chart



gated by the State Board of Education and directing the operations of the public school system.

• *Controller.* The Controller is the State Board of Education's administrator in matters concerning fiscal affairs. The office was created in 1945 by the General Assembly in an attempt to clarify and separate the duties of the State Board of Education from those of the State Superintendent of Public Instruction. The Controller is appointed by the State Board of Education and serves at its will.

The General Statutes require the Controller to supervise and manage the fiscal affairs of the State Board of Education. They define fiscal affairs of the Board as "all matters pertaining to the budgeting, allocation, accounting, auditing, certification, and disbursing of public school funds" administered by the Board. These broad duties are nicely summarized by Professor Rankin of Duke University in his book *The Government and Administration of North Carolina*:[3]

> The controller's specific financial duties are the keeping of records and amounts for all school and educational funds, gathering information necessary to the preparation of the biennial budget by the board, issuing requisitions upon the state auditor for educational funds, and, with the aid of the auditor, auditing all school funds. The controller is the purchasing officer for the department; all supplies paid for out of appropriations to the board—from inner tubes to textbooks—are procured through his office. For each local unit, the controller allots, as the board determines, the appropriate number of teachers and sets salary schedules on the basis of certification by the state superintendent. The controller is also . . . [responsible for the school transportation system provided at the state level]. . . . He is, finally, to supply any information necessary to the superintendent in carrying out his duties.

The Controller carries out his responsibilities with respect to fiscal affairs through seven divisions: Auditing and Accounting, Insurance, Personnel, Plant Operation, Teacher Allotment and General Control, Transportation, and Textbooks. A growing area of responsibility is accounting and disbursing federal funds. This function has resulted from the enactment of federal programs such as the Elementary and Secondary Education Act of 1965, which has increased greatly the federal money available for public education.

• *Department of Community Colleges.* The Community College Act of 1963[4] authorized the establishment of a comprehensive system of educational institutions throughout the state to offer courses of instruction in one or more of the general areas of two-year college-parallel, technical, vocational, and adult education programs. It also authorized a Department of Community Colleges to be established by and operated under the authority of the State Board of Education. The Department carries out Board pol-

icies in providing state-level administration for the system of community colleges that presently includes 13 community colleges and 37 technical institutions, all of which are separate from the public school system of the state.

The Department is organized into six divisions and one section: three educational, one industrial services, one special educational programs, one evaluation and accreditation, and one for fiscal affairs. The chief administrative officer of each is a director who has responsibility for implementing rules and regulations adopted by the State Board of Education that affect the institutions of the community college system. Unlike the arrangement for public schools, the responsibility for fiscal affairs is within the Department of Community Colleges; it is not placed under a separate controller. Thus state and federal funds, which amount to 65 per cent of the total financial support of all of its institutions, are disbursed by the Department of Community Colleges.

• *Private Organizations.* Besides the educational bodies created by the law, there are a number of important private educational organizations. The North Carolina Education Association (NCEA), with a membership of over 42,000, is the largest and most powerful of these groups. Other educational organizations include the North Carolina State School Boards Association, the professional organization for school boards; the North Carolina Teachers Association, and the state PTA associations. These organizations, plus several others, make up the educational coalition we know as the United Forces for Education. The UFE's primary purpose is to advance the legislative aims of public education as viewed by its ten organizational members. The UFE, plus the other professional organizations noted, represent a strong force for promoting and improving public education in North Carolina.

¶ 16.02(b). Local Structure of Education

• *Administrative Units and Their Boards of Education.* The county or city administrative unit is the legal structure that operates directly below the State Department of Public Instruction in the public school organizational hierarchy. By statute, each county of the state is classified as a county administrative unit; the schools of this unit are under the general supervision and control of a county board of education. City administrative units are areas within a county or adjacent parts of two or more contiguous counties that have been approved as separate school units by the State Board of Education. The schools of city units are under the control of a city board of education, the board having been created by a special act of the legislature.

During the current 1968–69 school year there are 100 county and 57 city administrative units in North Carolina. In size they range from 800 to over 80,000 pupils in average daily attendance. Each of these admin-

istrative units has a board of education with the responsibility for directing, supervising, and planning the public schools for that unit. The board is a corporate body with the power to sue and be sued and with "all powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon county and city boards of education."[5] Among the specific duties imposed upon it by the General Statutes are the election of the superintendent, the election of teachers, principals, and other professional employees, the preparation of the school budget, and the promulgation of all rules and regulations necessary for governing enrollment of pupils. One power the school board does not have, as it does in most other states, is the authority to levy or cause to be levied taxes for the financial support of the schools they administer. The tax-levying authority for school administrative units in North Carolina is the board of county commissioners.

• *Local School Superintendents.* The superintendent of schools is the professional school administrator at the local level. He is the school system's chief executive officer, and his relationship to the local board is comparable to the relationship of the State Superintendent to the State Board of Education. In the exercise of the duties and powers granted to him by the statutes, he serves as ex officio secretary for the board of education; approves teachers elected by school committees, or recommends teachers, principals, and other personnel to the board for approval in those systems with no committees; and approves and signs state and local vouchers. Superintendents are elected by boards of education for terms of two or four years, subject to the approval of the State Superintendent and the State Board of Education. To be eligible for initial selection, a candidate for superintendent must have a superintendent's certificate, three years' experience in school work within the past ten years, and a doctor's certificate showing him free of communicable disease. Beginning in 1973, new superintendents must have the advanced certificate, which requires one year of specified work beyond the master's degree.

• *District School Committees and Advisory Councils.* The third and lowest unit in the legal framework for administering the public schools is the district school committee or the advisory council. At one time all county units were divided into districts, each district having a school committee. Improved communications and transportation have reduced the need for school committees to help operate the schools under the county school board. In 1965, G.S. 115–70, the statute providing for appointment of district committees, was amended so that county school units that have chosen to organize as one district need not appoint school committees. Since the State Board of Education creates county administrative units upon the recommendation of the county board of education, the county school board decides whether its unit will have district school committees.

In many counties school committees have been replaced by advisory councils. Unless the county board chooses to grant it specific powers, the advisory council can only advise the county board; it does not have the powers formerly enjoyed by the school district committee.

Eighteen counties still have school committees. In them the county board of education elects or appoints three to five members per committee for a term of either two or three years. The principal statutory duties of the committee for the schools in its district are: (1) to elect the principal upon recommendation of the superintendent and subject to approval of the board of education; (2) to elect the teachers and auxiliary personnel upon nomination of the principal and subject to approval of the board of education and the superintendent; (3) to protect all school property in the district in accordance with the rules and regulations of the board of education. In addition to these powers, the committee may have authority to adopt policies and rules for the operation of the schools in its district, if the county board has elected to convey such power. In those few counties where the school committee remains, however, its powers have been substantially reduced, both by the General Assembly and by the county school board itself. In time it will probably cease to exist as a structure for the operation of the schools.

• *Boards of County Commissioners.* The board of county commissioners is an integral part of the legal structure of public education. Although county commissioners are seldom thought of as educational policy-makers, they in fact influence and at times determine school policy. These occasions arise in the budget process. The board of commissioners is the tax-levying authority for the schools, except in those few situations in which the governing body of a municipality performs this function for a city school unit wholly within its boundaries. It provides the local tax money and therefore influences and at times even substitutes its judgment for that of the school board on what are basic and educational issues.[6]

The already substantial role played by the county commissioners in the school area takes on a new and increasing dimension as teacher militancy over inadequate salaries spreads over North Carolina.[7] This point is probably best illustrated by a recent episode in a large Piedmont city school system in which a labor organizer, who had come to North Carolina to talk with a teacher group, accompanied them to a school board meeting. From the discussion with the board he soon realized that it had no fiscal authority but was dependent upon the county commissioners for the school tax levy. Turning to the teachers, he said: "We are wasting our time here. We need to be talking to the people with the tax power—the board of commissioners." It is reasonable to expect that teacher groups demanding more money for schools at the local level will agree with this logic and will put most of their pressure on the governmental board that possesses the taxing power—the county commissioners. The subject of teacher negotiations therefore

becomes an important one to county commissioners. Several books and articles listed in the bibliography deal with it.

• *Boards of Trustees of Community College Institutions.* The General Statutes authorize three types of institutions within the Department of Community Colleges: community colleges, technical institutes, and industrial education centers. At present only the former two exist. The local administrative authority for any of these institutions is vested in a board of trustees. Its duties and responsibilities are similar to those of the local school board. It is a corporate body with all the powers usually conferred on such bodies and has such other rights and privileges as are necessary for the management and administration of the institution. Like the school board, it is dependent upon the local tax-levying authority (or authorities) for local financial support.

Both the community college and the technical institute have twelve-member boards. Four members are appointed jointly by the local boards of education within the administrative area of the institution, four are appointed jointly by the board or boards of county commissioners of the administrative area, and four by the Governor. The trustees serve for eight-year, overlapping terms and must be residents of the county or counties comprising the administrative area of the institution or residents of counties contiguous to these. Vacancies are filled by the agency appointing the member causing the vacancy. If a vacancy is not filled within sixty days, the Governor has the authority to appoint all replacements for the unexpired term.

¶ 16.03. Local Board of Education

¶ 16.03(a). Selection of Board Members

The general law for the nomination and election of county school board members was rewritten by the 1967 General Assembly to require *all* counties to elect their county school board members. Effective July 1, 1969, G.S. 115–19 will require counties that do not have local legislation providing for the popular election of their school board members to elect them in one of the following ways: (1) on a partisan basis in the same manner as members of the General Assembly; (2) on a nonpartisan basis at the time of the primary election for nomination of candidates for the General Assembly. If the county does not have local legislation providing for an elected school board, the election is to be at-large on a nonpartisan basis with a board consisting of five members elected to serve four-year staggered terms.

G.S. 115–18 was rewritten to provide uniformity in the size and length of term of county school boards. It requires all county boards of education, by July 1, 1969, to have between three and nine members elected at the county level for terms of four years. Since school board elections will be at

the same time as elections to the General Assembly, G.S. 115–22 was amended to change the time for taking the oath of office from the first Monday in April to the first Monday in December next succeeding the election. Vacancies in nominations selected on a partisan basis are to be filled by the county executive committee of the political party of the candidate creating the vacancy. Vacancies in office of members elected pursuant to the general law are to be filled by appointment by the remaining members of the board. The new board member is to serve until the next election of the school board, at which time the remaining unexpired term shall be filled by election. The new law further makes any qualified voter residing within the county eligible to vote for members of the county school board in both the primary and general elections. Thus city residents in those counties that have city units may vote for the county board members in addition to the members of their city school boards.

The election procedure just described applies only to county school boards. City boards of education are creatures of special acts, and the general law just described has no application to them. The special act creating it specifies the manner for selecting any particular city board of education. Many different methods are now provided, and unless a special act adopts the existing general law, the selection procedure for any given city board of education will not be affected. A slight majority of city administrative units have appointed school board members, but the trend in recent years has been toward nonpartisan elections.

¶ 16.03(b). Organization of the Board

The General Statutes provide very little guidance for organizing the school board. G.S. 115–26 provides that county boards appointed by the General Assembly are to "organize" at the first board meeting in April by electing a chairman. It says nothing, however, about county boards whose members are selected in another manner or about city boards of education. The date itself is no longer accurate since all county school boards become elected boards in 1969, and new members will take office in December following their election. When the chairman is absent, the board may appoint a temporary chairman. The superintendent of schools, both county and city, is the ex officio secretary to the board and as such keeps the minutes of the board. The superintendent has no vote. Meetings on the first Monday of each quarter are required by statute, but the board may hold regular monthly meetings and meet in special session on the call of the chairman or secretary as often as school business may require.

Since the statutes make no mention of such matters as proper notice for meetings, what constitutes a quorum, and what is required in voting, the law in this area has been made by the courts. Thus a quorum has been held to be a majority of the whole membership, notice to members a requirement of a legal meeting, and method of voting a matter for the board to decide.[8] The General Statutes do not require board meetings to be pub-

lic. When the State Supreme Court was asked to rule on the legality of closed meetings, it sanctioned executive meetings of boards of education.[9] The General Statutes, however, make the minutes of board meetings a public document, and any citizen has the right to see them.[10]

City school boards and county boards created by special legislation are not bound by the general law except in certain situations. The local act creating a board should be consulted when questions of procedure or organization arise.

¶ 16.03(c). School Consolidation

Consolidation of school units is a growing trend throughout the country. North Carolina presents no exception to this trend. A number of counties have recently consolidated separate school units into a county-wide system, and several others have consolidation studies under way or are contemplating consolidation in the near future.

In the 1967–68 school year, there were 160 separate school units (down nine from the preceding school year), and the recent consolidation in Gaston and Vance counties has reduced to 157 the number of separate administrative units that are in operation during the 1968–69 school year.

School consolidation has never been simply a matter of getting school boards to decide to consolidate into one unit. The great majority of North Carolina's county-wide school systems have always been one school unit and did not obtain their unity through a consolidation procedure. Some of the restrictive legal requirements for consolidation, however, were removed by the 1967 General Assembly, and consolidation of county and city administrative units is now easier. The legislature rewrote G.S. 115–11(11) to give the State Board of Education new powers in approving school consolidation plans. It also amended the former consolidation statute, G.S. 115–74, and added a new section, G.S. 115–74.1. The new section eliminates the necessity for a special act by the General Assembly and authorizes local school boards to work out together the problems of their merger, setting out the procedures they are to follow. When a plan of consolidation has been written and mutually agreed upon by the city and county boards of education (or two contiguous city administrative units) and approved by the county commissioners, the plan is submitted to the State Board of Education. If approved, the plan of consolidation and merger becomes final and cannot be changed or amended except by an act of the General Assembly. Submission of the plan to the voters of the geographic area affected by the consolidation is permitted but not required.

¶ 16.03(d). Special School Elections

One of the most confusing and poorly drafted articles of the public school law is article 14 of G.S. Ch. 115, which contains most of the law on special school elections. It is, however, an important part of the school law

for boards of county commissioners because it is the basis upon which the board may be required to call school elections.

Most of the purposes for which school elections may be called are set out in G.S. 115–116. Elections may be held to vote upon proposals to

(1) Authorize a local supplemental tax;

(2) Increase the supplemental tax rate in a school area that has previously voted a supplemental tax for less than the maximum rate (G.S. 115–117 sets the maximum rate of 50 cents per $100 property valuation unless the school administrative unit has a total population exceeding 100,000, in which case a tax not to exceed 60 cents per $100 property valuation may be levied);

(3) Enlarge city administrative units by extending a supplemental tax into areas of a county unit and consolidating such areas into the city school unit;

(4) Abolish a supplemental school tax;

(5) Authorize school bonds, as provided in G.S. 153–77;

(6) Provide a supplemental tax on a county-wide basis pursuant to merger of all administrative units within a county; and

(7) Annex or consolidate school areas, including areas from contiguous counties, and provide a supplemental school tax in such annexed or consolidated areas.

If an election is held on any of these issues and a majority of those voting do not vote in favor of the purpose for which the election was called, another election for the same purpose and in the same area may not be called until six months have lapsed since the preceding election.[11] Only elections on whether to abolish a local tax district are excepted from the six-month moratorium. Such elections may not be held sooner than one year after an election that has established a district or an election on the question of revoking the local tax district. Also, no election may be held on the issue of abolishing a local tax district when it is in debt or has obligated or committed its resources in any contractual manner.[12]

The county commissioners' role in the school election procedure begins when they receive a petition from a county or city school board requesting a special school election. The petition, which must be approved and submitted by the school board to the board of county commissioners, need not originate with the school board itself. A school committee or committees or the majority of the qualified voters in a school area may initiate a petition and submit it to the county board of education for any of the purposes set out above.[13] If a petition is approved by the school board and is submitted to the county commissioners, the board is required "to call an election and fix the date for the same."[14] The North Carolina Supreme Court has held

that if the petition is properly presented, the duty of the board of commissioners is ministerial and not discretionary, and mandamus will lie to compel them to call the election.[15] The only exceptions to this rule are when the school board withdraws the petition and when other laws, such as the limits on bonded indebtedness, would be violated and thus justify a refusal to call the special school election.

It is important to note that the duty to conduct a school election is imposed upon the county commissioners, not the board of elections. Article 14 sets out some of their specific duties for the election. In general, it requires the board to call the election, fix the date, designate the polling places, appoint registrars and judges, canvass and judicially determine the results, and record the results in its records.[16] In other words, the statutes require the board of commissioners to do all those things normally done by the county board of elections. Furthermore, there is no authority by which the commissioners may delegate to the elections board responsibility for conducting the special school election.

¶ 16.03(e). Desegregation

A discussion of the public schools would not be complete without some mention of school desegregation. In 1954 the U.S. Supreme Court in *Brown v. Board of Education of Topeka*[17] declared segregation to be unlawful. Separate school systems are inherently unequal, the Court said, and thus deny equal protection of the law to the children of the minority group in violation of the Fourteenth Amendment of the U.S. Constitution.

During the first decade following the *Brown* decision, achievement of desegregation was left primarily to the judiciary and their case-by-case approach. This approach proved inadequate to cope with the mammoth task of desegregating the over 2,000 legally segregated school districts of the South. The Civil Rights Act of 1964, however, provided the legal mechanism to accelerate school desegregation. Title VI of the act provided that discrimination in federally assisted programs must cease or those programs would no longer receive federal assistance. It was a declaration of national policy in civil rights. It was also the basis for a new approach to school desegregation.

The 1964 act required each federal department or agency that extends federal financial assistance to any program or activity to issue regulations to carry out the provisions of Title VI. The Secretary of Health, Education, and Welfare issued the regulation requiring school systems to be free of discriminatory practices in order to be eligible for receipt of federal funds administered by HEW. To qualify under the regulation, a system must either be in compliance with a final court order to desegregate or submit and comply with a voluntary desegregation plan that the United States Commissioner of Education has determined to be adequate.

The HEW regulation, however, did not halt discriminatory practices in school systems, and state and local school officials raised many questions

as to what constituted desegregation. As a result the U.S. Commissioner of Education, in the spring of 1965, issued a "Statement of Policies for School Desegregation" to indicate to school officials what steps would be necessary to bring their districts into compliance with the Civil Rights Act. The Guidelines, as the "Statement of Policies" came to be called, required the submission of a plan showing how the district intended to reach full compliance, setting out three types of acceptable plans: geographic attendance areas, freedom of choice, and a combination of the two. In 1966, revised Guidelines for the 1967–68 school year were issued. They shifted the emphasis from planning to performance as the test of compliance, and set percentage goals of race-mixing in the schools as minimum acceptable standards. The Guidelines issued March, 1968, for the 1968–69 school year eliminate the race-mixing percentages of the preceding Guidelines, but require a definite target date for removing the conditions of the dual white-Negro school system. HEW has set September, 1969, as the deadline by which this must be accomplished.

Most of the school administrative units in North Carolina chose a freedom-of-choice plan as the means of complying with the new regulations. A question soon arose whether freedom-of-choice plans were adequate if they did not result in substantial desegregation of the schools. An answer came in May, 1968, when the United States Supreme Court ruled in *Green v. New Kent County*,[18] a case arising from Virginia, that school boards have an affirmative duty to take whatever steps are necessary to convert a formally desegregated school system into a "unitary system in which racial discrimination [is] eliminated root and branch."[19] Thus the Supreme Court has put the burden on the school board to see that the dual school system is eliminated. It has held that the only plan that will satisfy the Fourteenth Amendment's constitutional requirement of disestablishing the dual school system is the desegregation plan that works.

¶ 16.04. Financing the Public Schools

¶ 16.04(a). General

North Carolina's approach to financing its public schools differs in two respects from that of most other states. First, the basic financial support for the system comes from the state rather than from local government. This means that state income and sales taxes rather than the locally levied ad valorem property tax are the primary revenue sources for financing schools. Second, the local school board has no authority to levy taxes for the schools in its unit; it must rely upon the board of county commissioners for the tax levy. These differences have been cited as the basis for both the strength of North Carolina's public school system and its weakness. No judgment will be made here on that question, but these two characteristics should be kept in mind in reading the next two sections dealing with school finance from the state and local level.

North Carolina's concept of public education as a state financial obligation is a fairly recent development. Although the State Constitution of 1776 provided "that a school or schools shall be established by the Legislature for the convenient instruction of youth . . . ,"[20] and some legislative recognition of the state's general responsibility for education came in the nineteenth century,[21] the first state appropriation for state support of public education was not authorized until 1899.[22] From this date state support for the public schools gradually increased until it was consummated in the Depression years with the passage of the School Machinery Act of 1933. This

Table 16–II

Sources of Support for Public School Expenditures in North Carolina by Level of Government and Revenue Measures: 1965–66[a]

Revenue Measure	Level of Government (Dollars in Millions) Federal	State	Local	Total Amount Derived from Each Source	Percentage of Total School Support from Each Revenue Measure
INCOME (individual and corporate)	$41.3	$141.0		$182.3	37.6%
GENERAL SALES		105.2		105.2	21.7
SELECTED SALES (beverages, tobacco, customs, etc.)	7.1	12.5		19.6	4.0
NONTAX SOURCES (interest, ABC, fines, fees, sale of property, etc.)	7.0	9.9	$ 13.2	30.1	6.2
PROPERTY TAXES			89.9	89.9	18.5
MISC. TAXES AND LICENSES (poll, dog, business, intangibles, bank, etc.)	1.9	51.2	5.1	58.2	12.0
TOTAL	$57.3	$319.8	$108.2	$485.3	100.0%
Percentage from Governments	**11.8%**	**65.9%**	**22.3%**	**100.0%**	———
National Percentage for Comparison	7.8%	39.1%	53.1%	100.0%	———

[a] Prepared by Warren Jake Wicker, Assistant Director at the Institute of Government.

Sources:

U.S. Bureau of the Census, *Governmental Finances in 1965–66*. Series GF–No. 13, pp. 4–5 and Table 18.

National Education Association, *Ranking of the States, 1966*. Research Report 1966–R–1. Tables 71–73.

Biennial Report of the Superintendent of Public Instruction of North Carolina: 1964–66, pp. 18–30.

North Carolina State Department of Tax Research, *Statistics of Taxation, 1966*, Tables 8a and 8b, 1967.

legislation embodied a principal of complete state support for the operational costs of the public schools.[23] As a result, the state assumed responsibility for providing and administering financial support for what was then an eight-month school term. Except for capital improvements and maintenance of plant, which are primarily paid for at the local level, the state pays for maintaining a statewide, nine-month school system. In this way the state attempts to guarantee a minimum level of educational opportunity to each child in the state regardless of where he lives or the school he attends.

This state-financed minimum level is supplemented by both the local and federal governments. As Table 16–II shows, 66 per cent of the total public school support (current expense, capital outlay, and debt service costs) during the 1965–66 school year was paid by state appropriations. During the same school year, local governments contributed 22 per cent and the federal government 12 per cent. The proportion of local, state, and federal support in any one school unit of course varied. In percentage of total support for current operating expenses (omitting capital outlay and debt service) from local sources, administrative units ranged from a high of 34.7 per cent (Mecklenburg) to a low of 5.1 per cent (Onslow). Likewise, federal support varied from a high of 33.5 per cent (Morven) to 4.8 per cent (Iredell).[24] The average per-pupil current expense expenditure from all sources was $426.29 during the 1966–67 school year, a 16 per cent increase over that for the preceding year.

¶ 16.04(b). State Support

State support for the public school system is primarily for current operating expenses. Most of these expenses are itemized in G.S. 115–79, which breaks the state school expenditures into the following five categories: general control, instructional service, operation of plant, fixed charges, and auxiliary agencies. Included in these categories are such major educational costs as salaries of administrative, teaching, and clerical personnel; office supplies; utilities; compensation and reimbursement for injuries and loss of wages; pupil transportation; libraries; and the child health program. Funds for this support are provided through biennial appropriations from the General Fund to the Nine Months School Fund, the state fund alloted by the State Board of Education to each school administrative unit for financing the basic state level of public school instruction, and certain special educational funds. In addition to those expenses financed from the Nine Months School Fund, the state appropriates money for vocational education, free textbooks, state-level administration of school affairs, social security and retirement payments for school personnel, and other special purposes.

Allocations for these sources are based upon budget requests submitted by the State Board of Education. In the 1967–69 biennium, $800,000,000 was appropriated for the public schools, representing almost 60 per cent of

the General Fund, a $134,000,000 increase over the last biennium. (This total includes social security and retirement payments.) Most of the state money comes from the state income tax (44 per cent) and sales and use taxes (33 per cent), with franchise, beverage, insurance, and other taxes contributing to a lesser degree.[25]

The individual school units' shares of the state appropriation are determined by the State Board of Education and then allocated to the 100 county and 57 city administrative units. The allocation to a particular unit is based on standards set by the Board, the most important of which are the number of pupils in average daily attendance and the salary schedules for various classes of school employees employed by the school unit to fill the state-allocated positions.

Besides providing this support for current operating expenses, the state has assisted local units in their responsibility for capital outlay expenditures. The General Assembly authorized bond issues of $25,000,000 (plus an appropriation of $25,000,000) in 1949; $50,000,000 in 1953; and $100,000,000 in 1963 for acquisition of school sites, construction of school facilities, and improvement and maintenance of the school plant. These funds have been distributed to school units primarily on the basis of a per capita average daily membership in the particular unit. As of January 1, 1968, only $60,000,000 of the 1963 bond money had been allocated for specific construction projects.[26]

Another source of state support for school capital outlay is the State Literary Fund. The State Literary Fund, established in 1825 as a state endowment for education, became, in the early part of this century, a permanent loan fund for local school units for constructing and equipping school plants. The fund is maintained by the State Board of Education, which lends this money for ten years at an interest not to exceed 4 per cent per year. The borrowing procedure is set out in article 11 of Chapter 115 of the General Statutes and the rules of the State Board of Education.

¶ 16.04(c). Local Support

Locally raised revenues, amounting to 22 per cent of the total school budget in the 1965–66 school year,[27] are used to support the public schools in two major ways. First, they provide and maintain the physical plant for the schools in the administrative unit; these functions are the primary responsibility of the local unit. Second, they supplement the state's minimum level of support for operating the schools. This local revenue comes from at least twenty different sources. These sources are usually distinguished as tax and nontax revenues, classifications stemming from the necessary expense doctrine.[28] Although the necessary expense limitation has apparently been avoided as a restriction on local financing for public schools,[29] the tax and nontax distinction makes a convenient division for looking more closely at local revenues available to finance the public school system.

Taxes contribute almost 90 per cent of the total local revenue used for

Table 16–III

Major Sources of Local Tax Revenues, 1966–67

Source	Amount Received	Percentage
PROPERTY TAX	$115,210,253	95%
INTANGIBLES TAX	4,835,438	4
POLL TAX[a]	691,452	1
DOG TAX (in some counties)	131,389	—
TOTAL	$120,868,532	100%

[a] Must be used for school support

schools. Table 16–III lists the local taxes used for schools and their relative importance to school financing. The ad valorem tax on personal and real property is the most important local revenue source. It accounts for approximately 95 per cent of the local tax revenues devoted to school finance, and provides most of the local current operating expense funds. It also is used to retire bonds for capital improvements through the levy of a special debt service tax.

The second most important tax source is the intangibles tax. Unlike the other local taxes, it is neither levied nor collected by the county. The state performs these functions and returns the proceeds, minus collection costs, to the counties. The other local tax sources contribute little revenue. The poll tax is noteworthy, however, because it is the one tax that must be used for the schools. The State Constitution requires that at least 75 per cent of the county poll tax be applied to the expenses of operating the schools of the county in which it is collected.[30]

Nontax revenues are a less important finance source in terms of revenues collected. They include such moneys as profits from the operation of alcoholic beverage control stores, the county share of the state beer and wine tax, interest on deposits, sales of property, proceeds from fines, penalties, and forfeitures, surpluses from the operation of government-owned public utilities and other proprietary operations of the county, and collections from students (see Table 16–IV). The most important nontax revenue sources are proceeds from fines, penalties, and forfeitures. Like the poll tax, these revenue sources are guaranteed to the schools. The State Constitution states:

> [T]he clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State . . . shall belong to and remain in the several counties, and shall be appropriated for establishing and maintaining free public schools in the several counties of the State. . . .[31]

Table 16–IV

Major Sources of Nontax Local Revenues, 1966–67

Source	Amount Received	Percentage
FINES, FORFEITURES, AND PENALTIES[a]	$ 5,636,763	37%
DONATIONS AND MISCELLANY	3,280,567	21
STUDENT COLLECTIONS (tuition, book rentals, fees)[a]	2,522,051	16
INTEREST	1,494,267	10
SALE AND RENTAL OF PROPERTY, BOND MONEY	1,333,352	9
ABC, BEER, AND WINE	1,029,311	7
UNCLAIMED FEES OF JURORS AND WITNESSES[a]	2,861	—
TOTAL	$15,299,172	100%

[a] Must be used for school support

Although not so significant in terms of revenue collected, several other nontax revenues are legally required to be used to finance schools. Among these are the proceeds from the sale of seized, tax-paid whiskey, which are paid into "the school fund of the county in which such seizure was made,"[32] unclaimed fees of jurors and witnesses,[33] proceeds of bonds granted to North Carolina by the federal government,[34] and the proceeds from the sale of cars used in prearranged racing.[35]

The responsibility for determining how much money is needed for the schools and how it should be spent rests basically with the local school board. The authority to provide it by taxation, however, is the responsibility of the tax-levying authority—the board of county commissioners (unless the school district lies wholly within the boundaries of a municipality, in which case the municipal governing board may be the tax-levying authority). Thus the school board must rely upon the board of commissioners for tax levies. This legal arrangement creates a situation in which the school board has the responsibility for education but lacks power to provide for it financially. The board of commissioners controls local financing but has no legal responsibility for the schools except the constitutional duty to see that the schools are maintained for the constitutional six-month school term. This separation of school responsibility from fiscal authority has both its advocates and critics. The point at which it creates a problem for the county commissioners is when disagreement between the school board and the county commissioners occurs as to what is adequate financing for the public schools. This problem and the method for resolving financial disputes are discussed in ¶ 16.05, on budgeting.[36]

¶ 16.04(d). Federal Support

Except for school desegregation, nothing in recent years has had a greater impact on the public schools than federal grants for public education, and probably nothing holds so much promise for better schools. Until very recently public schools had been financed almost exclusively by state and local government. With the passage of the National Defense Education Act in 1958 and the Elementary and Secondary Education Act of 1965, federal money for North Carolina schools has increased from practically nothing to $66,000,000 in the 1966–67 school year. In the support for current operating expenses, it increased 122 per cent from the 1965–66 school year to the 1966–67 school year. That it will continue to grow is guaranteed by the recent congressional authorization of $14,300,000,000 to be spent for schools over the next three years.

Federal funds are categorical funds, which means they are appropriated to the states by Congress for specific educational purposes. Thus federal financial support is earmarked for such school programs as vocational education; school lunchrooms; instruction and guidance services; school library resources, textbooks, and other instructional materials; and special programs for educationally deprived children. Most of this money is for programs to support the current operation of the school system, and in North Carolina it is channeled through the State Board of Education for distribution to the local units.

Excepted from the requirement that funds be channeled through the State Superintendent's office are funds for the operation and construction of schools in impacted areas (areas in which there is a large concentration of federal employees such as military bases) and the Title III projects of the Elementary and Secondary Education Act (known as PACE projects—Projects to Advance Creativity in Education). Forty-three PACE projects, costing over $4,000,000, had been funded in North Carolina through July 1, 1967.[37] However, because of an amendment to the Elementary and Secondary Education Act by the Ninetieth Congress, Title III money is to be handled like other federal money and henceforth will be channeled to the school unit through the State Board of Education.

¶ 16.05. The Budget-Making Process

¶ 16.05(a). Introduction

Although North Carolina's school system is primarily supported by state funds, the average county allocates from 50 to 75 per cent of its funds for the operation of the public schools. From the standpoint of cost to the local taxpayer, apart from the general stake society has in an educated citizenry, schools are the single most important responsibility of boards of county commissioners. Like all other funds, school funds must be requested and provided for in a school budget.

Budgeting for schools is a complex and sometimes uncertain process. This complexity and uncertainty exists for two reasons. First, two sets of laws set out detailed procedures and requirements for school budgeting—the Fiscal Control Act of G.S. Ch. 153 and the school budgeting law of G.S. Ch. 115. Since both laws apply to schools, questions can arise about when the provisions of which law do or do not apply.[38] The second complicating factor in school budgeting exists because school boards are dependent upon the county commissioners[39] for local financial support.[40] School boards have no power to levy for taxes to supplement state financial support. In effect, school boards have the responsibility for operating schools, yet the appropriation of local funds beyond what is necessary to provide for the constitutional six-month school term rests within the discretion of the county commissioners. In this circumstance, conflicts sometimes arise.

¶ 16.05(b). Relationship of the Board of County Commissioners to the Board of Education

Although the State Board of Education is responsible for the over-all supervision and administration of the state school system, the county or city school board is chiefly responsible for the operation of the schools within the particular board's administrative unit. The General Statutes grant the local school board substantial authority over such areas of school operation as personnel, property, organization, and program.[41] Nevertheless, the school board has no power to provide the funds to support school needs above the level provided by the state or to finance activities not paid for by the state. This power, and its attendant responsibility, lies with the board of county commissioners, which is designated by the school law as the "tax levying authority" for schools. As such, it must provide funds to maintain the constitutional school term. Failure to do so is indictable.[42]

The school law requires local boards of education to make the initial determination of what expenditures are needed for operating the schools and then file budget requests with the county commissioners in the same manner as other county departments and agencies. Except for the supplemental school budget, however, which the commissioners may accept or reject in whole or in part,[43] the school law does not clearly define the commissioners' authority and role in acting upon school budget requests.[44] Nevertheless, it is clear that the commissioners have less power with respect to the school budget than they have in adopting budgets for other county agencies. Their power is limited because the General Assembly has set out by statute, and the State Board of Education by rules and regulations, the general educational program of the state.[45] These statutes and regulations impose specific obligations upon county commissioners and boards of education that must be met. It is the duty of the local board of education to implement this general program; it is the duty of the county commissioners to provide funds to finance the program. In providing local funds

to pay for school programs fixed by law, the commissioners' review of the school budgets is limited to determining whether the requested funds are necessary to provide such programs. In discretionary areas of school operation, such as kindergartens or adult education programs, the commissioners' review of the budget is less restricted, and they have a general power to approve or disapprove recommendations for such programs.

Because of this division of authority and the absence of clear guidelines for either the school board or the board of commissioners, much uncertainty exists as to the role of each board. On several occasions differences between the two boards have resulted in an impasse that resulted in court litigation. The clearest definition of the relationship between the two boards emerged from a conflict carried to the North Carolina Supreme Court. The Court said:

> The basic philosophy with respect to the operation of our school system remains. It is the duty of the board of education to evaluate their needs, apply to the board of county commissioners for funds to supply the needs, and when funds are appropriated, to spend the same within the designated classification, current expenses and capital outlay, as will best serve school needs. It is the duty of county commissioners to study the requests for funds filed with them by the board of education and to provide by taxation such funds, and only such funds, as may be needed for economical administration of schools. . . . When disagreement arises, the county commissioners cannot be required to provide funds beyond their estimate of needs until the controversy has been resolved in the manner provided by statute. . . .[46]

The procedure for resolving conflicts that may arise between the board of education and the commissioners is described in ¶ 16.05(e).

¶ 16.05(c). School Budgets

• *General.* Three separate budgets must be prepared and maintained by all school administrative units for the operation of the school system. They are the current expense budget, the capital outlay budget, and the debt service budget. A supplemental tax current expense budget is required if the unit has a special supplemental school tax, and a capital reserve fund may be set up to establish a "pay-as-you-go" plan for capital improvements. The preparation of these budgets is the responsibility of the local board of education, which is required to submit them to the county commissioners (or board of aldermen, if it is the appropriate tax-levying authority) on forms provided by the State Board of Education on or before June 15 preceding the fiscal year for which the budget requests are made.

• *Current Expense Budget.* By statute, the first duty of boards of education and county commissioners in providing funds for current operations is to assure adequate funds for items of expenditure under maintenance-of-plant

and fixed charges not provided for by state funds.[47] The purpose of this statutory requirement is to preserve and protect the investment in the school plant. Items of expenditure that would come under this primary duty include: cost of repair to buildings and grounds; repairs and replacement of furniture and instructional apparatus and of heating, electrical, and plumbing equipment; and rent and insurance on buildings and equipment.[48]

The current expense budget is divided into two parts—revenues and expenditures. The revenue portion must show and total all funds requested for the current operation of the schools, whether from state or local sources.

The expenditure portion of the budget lists the expenditures to be made. Six broad categories of expenditure to be included in the current expense budget, with detailed objects of expenditure under each, are set forth in G.S. 115–78. Most of these items are funded by the state.[49] Table 16–V shows the categories and objects of expenditure under each, and also indicates those items that are financed substantially from state funds.

Two considerations should be kept in mind in preparing and approving the current expense budget. First, the state provides for an instructional period of 180 days, and current expense requests are limited to this time span. (This limitation does not prohibit summer schools, but they must be financed from local funds.) Second, until recently, the local tax-levying authority has been prohibited from supplementing items in the current expense budget that were financed from state funds, unless there was a referendum authorizing it to do so.[50] This restriction was removed by an amendment to G.S. 115–80(a) by the 1967 General Assembly. The amended law permits the county commissioners to levy taxes for funds to add or to supplement *any* item of expenditure in the current expense budget upon the request of the school board and a showing by the school board that necessity or peculiar local conditions justify the expenditure. A referendum to approve this use of local funds is no longer necessary. Specifically included in the amended statute as items of expenditure for which local taxes may be levied are additional personnel and supplements to teacher salaries. This authority, the constitutionality of which has recently been upheld by the Court of Appeals and the State Supreme Court,[51] promises to be a major factor in school board requests for local funds to pay for items in the current operating budget.

• *Capital Outlay Budget.* The capital outlay budget is filed with the current expense budget.[52] It includes requests for the purchase of sites; the erection of school buildings; improvements of new school grounds; alteration and addition to buildings; and purchase of furniture, equipment, trucks, automobiles, school buses, and other necessary items for school operation. G.S. 115–78(c) arranges these items into three categories—(1) new buildings and grounds, (2) old buildings and grounds, and (3) auxiliary agencies—and describes what items are to be included under each category.

The major difficulty with the capital outlay budget is distinguishing

Table 16–V

Expenditures To Be Included in School Current Expense Fund

X indicates expenditures made substantially from state funds.

GENERAL CONTROL	
Salaries and travel of superintendent	X
Salaries and travel of assistant superintendent	—
Salaries and travel of business manager	—
Salaries and travel of attendance officer	X
Salaries of clerical assistants	X
Salaries of property-cost clerks	X
Salaries of treasurers, including cost of their bonds	—
Per diem and travel of county board of education (state share limited to total of $100 per annum)	X
Office expenses	X
Cost of audit	—
Elections	—
Attorneys' fees	—
Other necessary expenses of general control	—
INSTRUCTIONAL SERVICES	
Salaries of elementary and high school teachers	X
Salaries of elementary and high school principals	X
Salaries of supervisors	X
Travel and office expense of supervisors	—
Salaries and travel of vocational education teachers (agriculture, home economics, trades and industries, and distributive education; see G.S. Ch. 115, art. 27)	X
Clerical and travel expenses of principals	—
Commencement expenses	—
Instructional supplies	X
OPERATION OF PLANT	
Wages of janitors	X
Cost of fuel	X
Water, light, power	X
Janitors' supplies	X
Telephone	X
MAINTENANCE OF PLANT	
Cost of repairs to buildings and grounds and teacherages (including salary of superintendent of grounds)	—
Repairs and replacements of furniture and instructional apparatus	—
Repairs and replacements of heating, electrical, and plumbing equipment	—
FIXED CHARGES	
Cost of rents, insurance on buildings and equipment	—
Workmen's compensation (on other than bus drivers)	—

Table 16–V, Continued

Compensation to injured employees	X
Payment for injuries to school children	X
Retirements paid to state and employees	—
Tort claims (as covered in G.S. 143–300.1)	X
AUXILIARY AGENCIES	
Transportation of pupils	X
Insurance on activity buses (see G.S. 115–53)	—
Library supplies, repairs, and replacements	X
Other costs of operation and maintenance of school libraries	—
Child health programs	X
Aid to indigent pupils	—
Night schools	—
Summer schools	—
Adult education	—
Lunchrooms	—
Veterans' training	—
Interest on temporary loans	—

certain items that might be included in the maintenance-of-plant section of the current expense budget. Generally a distinction is made between repairs and replacements, which are classified current expense items, and new acquisitions, which are classified capital outlay items.

The capital outlay budget may also include requests for appropriations for a capital reserve fund. This fund allows the school board to accumulate funds for buildings and other items of major expense that must be purchased in the future. The fund is described in more detail in ¶ 16.05(f).

• *Debt Service Budget.* Before considering the preparation of the debt service budget, two general limitations to the issuance of county bonds for school purposes should be noted. One is the "two-thirds limitation," a constitutional restriction that limits counties in contracting debts during any fiscal year to an amount "exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county . . . shall have been reduced during the next preceding fiscal year, unless the subject be submitted to a vote of the people of the particular county. . . ."[53] The second limitation is statutory. G.S. 153–87 provides that net school indebtedness cannot exceed 5 per cent of the assessed valuation of taxable property. However, if a county assumes "all outstanding indebtedness for school purposes of every city, town, school district, school taxing district, township or other political subdivisions therein," the limit upon net debt for school purposes is increased to 8 per cent. The North Carolina Attorney General has ruled that the 8 per cent limitation applies even if there has been no debt assumption by the county if there is no outstanding school debt owned by units other than the county.[54]

Boards of education prepare and submit the debt service budget with other budgets by the June 15 deadline. This budget includes payments of principal and interest on indebtedness incurred for school purposes and payments required to be made into sinking funds that are due in the budget year. Except for those few city administrative units in which the municipal governing body is the tax-levying authority (the Mooresville and Rocky Mount city units are examples), the county school board prepares and submits the debt service budget. Thus the county school board prepares these budgets for all separate school tax districts and city administrative units for which the county commissioners are the tax-levying authority.

The key to the debt service budget is the county accountant. The statutes require him to examine all county debt service requests and to determine their accuracy.[55] In actual practice, the county accountant prepares this budget and determines what requests are sufficient to meet debt service payments in the budget year. Once he sets this figure or approves these budget items as adequate, the amounts cannot be reduced by the commissioners. The commissioners must adopt his recommendation and provide sufficient funds to pay for it. In general, it can be said that the commissioners must provide those funds needed for payments of principal and interest and for payments into sinking funds. Their only area of discretion is whether to combine the school debt service fund with the county debt service fund.[56]

• *Supplemental Tax Current Expense Budget.* City and county school boards with jurisdiction over areas for which supplemental school taxes have been approved by the voters file a supplemental tax current expense budget. (Many school boards do not actually file a separate budget but instead integrate the supplemental tax line items into the current expense budget.) This budget requests appropriations to operate the schools at a higher level than would otherwise be provided. Items financed from state funds, such as teacher salaries, may be supplemented; or completely new items, such as additional personnel not allotted and paid for by the state, may be added.

Certain limits on the use of supplemental taxes should be noted. First, they are available only to supplement items of current expense. These may be such things as kindergartens, adult education, summer schools, teacher supplements, additional teachers, or nearly any other program in the school that can be considered part of the educational process. To use them to supplement items to the capital outlay or debt service budget, however, would be unlawful. Second, the statutes place a limit on the amount of supplemental tax that may be levied. It cannot exceed 50 cents on the $100 valuation of taxable property unless the administrative unit, district, or other area has a population exceeding 100,000, in which case a maximum levy of 60 cents is authorized. If the voters in an area approve a rate below the statutory maximum, only a tax up to the voter-approved rate may be levied.[57] Third, the commissioners may accept or reject the supplemental

tax budget in whole or in part.[58] Once the budget is approved, however, the commissioners are obligated to levy the supplement to fund the budget, subject only to the limit set by the voters.

The amendment of G.S. 115–80(a), which permits supplements or additions to any item in the current expense budget without the necessity of a vote, has made the use of the voted supplemental tax less important, but not unnecessary. The voter-approved supplement represents a mandate by the people that the commissioners cannot easily ignore.

• *Operating Budget.* All of the budgets submitted to the county commissioners in June must be returned to the school boards on or before July 10. Seldom are the returned budgets actually approved budgets. The county commissioners normally scale down the requests of the school board and ask that the budgets be resubmitted within the limits placed on them by the commissioners. If the school board accepts these modifications, the budgets are then approved. Approved budgets are filed with the State Board of Education.

In early July the school board receives notification from the state Controller of its tentative allotment of state funds for operating the schools. The school boards also receive notification from the state whether their local budgets, including supplements for operating schools at a higher standard, are acceptable.

Once this notification has been received, the school board must prepare an operating budget on forms provided by the state and file it with the State Superintendent and State Board of Education on or before October 1. The operating budget shows the total funds available for school purposes and serves as the blueprint for operating the schools in the current school year.

¶ 16.05(d). Apportionment of Local School Funds Among Administrative Units

Most of the locally raised revenue for schools is required by statute to be apportioned among the administrative units in a county on a per capita enrollment basis. Included among funds that must be apportioned are all county-wide current expense funds[59] and supplemental taxes levied county-wide.[60] Capital outlay funds for new school sites, additions to present school sites, new school buildings, new additional construction at existing buildings, and equipment for new buildings are apportioned to the various school units on the basis of budgets approved for each administrative unit. All other capital outlay school funds are apportioned on a per capita enrollment basis in the same manner as the current expense funds are apportioned.

The per capita enrollment of each school unit is determined by the State Board of Education. Every year the State Board certifies to each unit the enrollment figures for that school system. On the basis of these enroll-

ment figures and the approved budget, the county remits to the school units, on a monthly basis, funds for current expense and capital outlay. In the event a greater amount is collected and paid to any unit than is authorized to be spent in its approved budget, the surplus becomes an unencumbered balance to be credited to the fund to which it was deposited for the coming fiscal year.

Revenue collections for debt service funds are handled differently. Instead of being paid to the administrative units, they are deposited to the credit of a county debt service fund or a district debt service fund, the indebtedness of which is payable from county funds. Funds are then paid out when principal and interest payments become due.

¶ 16.05(e). Procedure for Settling Budget Disputes Between Commissioners and School Boards

County commissioners need not approve school budget requests except to the extent necessary, in their judgment, to maintain the system of public schools provided for by the General Assembly. The only budget item over which they have no discretion is the payment required to meet debt service obligations in the budget year as set by the county accountant.[61] With this exception, they may reduce or eliminate any request for expenditures that they judge not necessary for maintaining the public schools.

The school board, however, need not accept a reduction or elimination of a budget request. If it is unwilling to accept the commissioners' reduction, it may invoke the dispute procedure set up by the General Statutes in G.S. 115–87 and G.S. 115–88. This procedure begins with a joint meeting of the two boards, which must be arranged by the two chairmen within one week of the disagreement. At this meeting the budget or budgets over which there is disagreement must be considerd "carefully and judiciously item by item." If the boards cannot reach agreement, each board has one vote on the question in dispute, the majority of each board determining its vote. If the boards remain deadlocked, the issue is taken to the clerk of the superior court, who must render a decision within five days. If either board is dissatisfied with the clerk's finding, it may appeal within ten days to the superior court. In the superior court the judge must "find the facts," unless one of the boards has requested a jury trial, and enter judgment requiring a tax levy to provide the funds necessary to maintain the schools.

Either board may appeal the decision to the State Supreme Court. If such an appeal would delay final determination of school appropriations until after the time for levying taxes for the schools, the superior court judge is required to order the commissioners to levy for the ensuing year a tax rate sufficient to pay the debt service fund and to provide, together with what is received from the state's Nine Months School Fund, an amount for current expense and capital outlay equal to the funds available for these purposes in the previous year.[62]

¶ 16.05(f). Capital Reserve Fund

The 1959 General Assembly enacted five provisions that set out in detail the procedure for establishing a capital reserve fund, the permissible investments of the funds, the method for accounting for these funds, and the procedure for withdrawals.[63] The basic purpose of the capital reserve fund —also known as the pay-as-you-go plan—is to permit local boards of education to anticipate future school capital outlay needs before they arise and to build up capital that will at least in part pay for the new facility.

Separate capital outlay reserve funds are not maintained for each school unit in the county. Revenues approved for these funds are placed in a depository designated by the county commissioners, and payment to a unit is made only upon withdrawal of funds for disbursement. A unit may withdraw only an amount equal to that paid into the fund pursuant to approved budget requests for that unit, plus a pro rata share of accrued earnings of its funds.

¶ 16.05(g). Disbursement of School Funds

The local school board is responsible for paying all obligations incurred in the operation of the public schools, promptly and when due.[64] The specific procedure for disbursing school funds will not be set forth here. The procedures are complex, detailed, and not easily described. They also vary depending upon the source of the money. The procedure for withdrawing state funds is different from that for withdrawing local funds, and both are different from that for the disbursement of federal funds. Furthermore, the disbursement procedure varies depending upon whether it is a city or county school unit, a school district within an administrative unit, or an individual school that withdraws the fund. In general, however, school funds are disbursed by warrants signed by the chairman and the secretary of the school board; for local school funds, the warrant is countersigned by the county accountant or the treasurer of the city unit.[65] Warrants are usually drawn monthly and must be accompanied, for state funds, with certified statements of expenditures and obligations due and payable in the succeeding month. Local funds are disbursed on the basis of an invoice or voucher that will show that the warrant is proper. Thus the type of proposed expenditure must be identified and be requested by a statement or voucher signed by proper school officials. For payment of salaries, the monthly payroll, prepared on forms provided by the State Board of Education, is the only proper authority for obtaining funds.

School boards must pay their obligations "promptly and when due." To facilitate meeting this responsibility, the statutes require the school board to inform the county commissioners of any anticipated expenditures that will exceed the current collection of taxes and any balance on hand. If the expenditure is for an expense that the board of commissioners is obligated to pay by virtue of the school budget approved by it, the board

is required to make the necessary funds available, even if it must borrow the money. But if a school board or its members willfully create a debt that results in an obligation exceeding the amount authorized by the budget, and without approval of the board of commissioners, the members of the school board responsible for the debt are personally liable for it.

¶ 16.05(h). Financial Records, Reports, and Audits

Both the Fiscal Control Act and the school law require numerous records and accounts of school financial transactions to be maintained. The school law, which duplicates in part the record-keeping required of the county accountant by the Fiscal Control Act, requires the superintendent of schools, who is the secretary of the school board, to keep a complete and detailed record of all financial transactions of that board.[66] Besides this record-keeping for the board, the county superintendent has other duties. He must record all fines, forfeitures, and penalties due to the school fund;[67] keep separate financial records for special taxing districts;[68] and examine yearly the county records to see that all moneys accruing to school funds are correctly and promptly accounted to it.[69]

Many reports must be made from the records kept. Most go to the State Board of Education or the State Department of Public Instruction. An example is the annual treasurer's report of the year's receipts and disbursements during the preceding fiscal year.[70] Also, the U.S. Office of Education requires an increasing number of reports in accounting for federally financed school programs.

Besides the records and reports that must be kept, the school law requires an annual audit of all school funds.[71] The State Board of Education, in cooperation with the State Auditor, must audit state school funds disbursed by county and city administrative units. The local boards of education must audit all county, city, and district school funds for which they are responsible. The audit report must be filed not later than October 1. On or before that date a summary statement of the audit report must be published in a county newspaper, or, if none is published within the county, the statement must be posted at the courthouse door.

¶ 16.06. Financing and Budgeting for the Community College System

¶ 16.06(a). Financing the System

The institutions of the community college system, like the public schools, are administered and financed from both the state and local level. Chapter 115A of the General Statutes divides this responsibility between the State Board of Education at the state level and the board of trustees and the board of county commissioners at the local level. Approximately 65 per cent of the financial support for these institutions is provided from state and federal sources, 20 per cent from student tuition and fees, and 15

per cent from local sources. This is almost the same division of financial support between state and local government as occurs in the public school system.

The board or boards of county commissioners that are responsible for establishing a community college institution are responsible for providing adequate local funds to meet their share of the financial needs of the institution.[72] These local funds must come from three sources: appropriation of nontax funds, annual tax levy, or issuance of bonds (the latter for capital expenditure only.)[73] Before any of these revenue sources may be used, it first must be approved by the voters. Neither tax nor nontax revenue is available for supporting community college institutions until the voters have approved its use for that purpose. However, if the voters approve a local supplement, it has no maximum limit, as it does with the public schools.

¶ 16.06(b). Budgeting Procedures

Institutional expenditures are divided into four budgets: capital outlay, current expenses, supplemental current expense, and debt service. Three of these major budgets—the capital outlay, current expense, and supplemental current expense—are prepared by the trustees of the institution. The debt budget is prepared by the county accountant; the institutional trustees have no responsibility for it, and the commissioners must levy taxes to meet the debt requirements as set by the accountant. The supplemental budget, containing requests for local funds to supplement items of current expense provided by the state, is found only in those counties in which the voters have specially authorized the supplement. Since it is not authorized for all institutions and is handled almost exactly like the public school supplemental budget, it will not be considered further here. Thus the two budgets that are of most concern to commissioners and trustees are the current expense and capital outlay budgets.

The statutes break down the items of the current expense and capital outlay budgets that are to be supported from state and local funds. The current expense budget is broken into the following general categories: general administration, institutional services, maintenance-of-plant, fixed charges, and auxiliary agencies. The state finances completely the expenses for instructional and auxiliary services and at least part of all the other categories. The county commissioners are responsible for adequately financing certain items in the categories of general administration (e.g., auditing local funds, local elections), operation of plant (e.g., wages of janitors, utilities, costs of operating motor vehicles), fixed charges (e.g., rentals of land, buildings, and equipment), and maintenance of plant. See G.S. 115A–19(a)(2) for a complete list of these budget items.

The capital outlay budget is also divided between expenditures financed by the state and expenditures financed locally. Some of the major local expenses of the capital outlay budget are acquisition of land; erection, al-

teration, and additions to buildings; and the purchase of automobiles, buses, trucks, and other motor vehicles. One major difference between community college financing and public school financing is that for the community college system, state funds are available as a regular part of capital outlay financing. State funds can be used for grants to individual community colleges and technical institutions to match local funds for purchasing, constructing, or remodeling buildings or for administrative or instructional purposes. The state grant may be up to $500,000 per institution.

The trustees must submit the current expense and capital outlay budgets to the board or boards of county commissioners on or before May 1. The budget must contain all proposed appropriations to be provided from federal, state, and local funds and all expenditures for which these funds are requested. The county commissioners may approve or disapprove in whole or in part that portion of the budget requesting local public funds. After final approval by the commissioners, the budgets are submitted to the State Board of Education. The State Board may approve or disapprove any items of the budget for which state funds are requested and even approve items in the current expense budget that are to be financed from local funds. If it is not satisfied with the local financial support of either budget, it may withdraw or withhold state financial and administrative support of the institution.[74]

¶ 16.06(c). Administration of Budgets

The Administration and operation of budgets is similar to that of the public schools. The State Board of Education deposits state funds in the state treasury in monthly installments to the credit of each institution. Funds are disbursed by warrants drawn on the State Treasurer. As with the public schools, a certified statement of all expenditures due and payable in the next succeeding month must be filed with the State Board of Education by the board of trustees.

Local funds are credited to each institution by the county accountant on the basis of approved budgets. The county treasurer or accountant remits moneys collected to the institution at the end of each month. Local funds are disbursed by warrants drawn on the treasurer of the institution. All funds are audited yearly by the State Auditor at the end of each fiscal year.

All institutional obligations must be paid promptly when due, and the board of trustees must notify the county commissioners monthly of anticipated expenditures for which the commissioners are responsible that will exceed available funds. The commissioners are required to provide the needed funds and are authorized to borrow against amounts approved in the budget and to issue short-term notes for the amount borrowed.[75] The trustees may create no debt that results in expenses exceeding the approved budget without approval of the commissioners.

¶ 16.07. Bibliography

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Notes

1. M. C. S. NOBLE, A HISTORY OF THE PUBLIC SCHOOLS OF NORTH CAROLINA 3 (1930).
2. N.C. CONST. Art. IX, § 8.
3. ROBERT S. RANKIN, THE GOVERNMENT AND ADMINISTRATION OF NORTH CAROLINA 190 (1955).
4. N.C. GEN. STAT. Ch. 115A.
5. N.C. GEN. STAT. § 115–27.
6. See text at page 365 *infra*.
7. Although many have thought, and some still think, that North Carolina will avoid teacher militancy and collective bargaining by teachers, little evidence supports this position. Teacher organizations in the Winston-Salem/Forsyth, Goldsboro city, Burlington city, and Wayne county units have recently talked and acted in these terms, and several superintendents have openly predicted teachers' unions in this state. One school official recently predicted teacher revolt in North Carolina within five years, and Lieutenant-Governor Robert Scott has said that North Carolina "faces the prospect of teacher strikes or losing its best teachers to public schools in other states if teacher salaries are not raised."
8. See Edwards v. Board of Education, 235 N.C. 345 (1952).
9. See Kistler v. Board of Education, 233 N.C. 400 (1951).
10. See N.C. GEN. STAT. §§ 132–1, –6.
11. N.C. GEN. STAT. § 115–117.
12. N.C. GEN. STAT. § 115–120.
13. The statutory requirements and procedure for a petition are quite detailed and will not be discussed here. For further information, see G.S. 115–118 through –120.
14. N.C. GEN. STAT. § 115–121.
15. Board of Education v. Board of County Comm'rs, 189 N.C. 650 (1925).
16. N.C. GEN. STAT. §§ 115–121, –122.
17. 347 U.S. 483, 493 (1953).
18. 36 U.S. LAW WEEK 4476 (May 28, 1968). There were two companion cases, from Arkansas and Tennessee, that were decided at the same time.
19. *Id.* at 4478.
20. N.C. CONST. Art. XLI (1776).
21. KNIGHT, *op. cit. supra* at 93.
22. BIENNIAL REPORT OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF NORTH CAROLINA 1933–34 AND 1935–36, 86.
23. N.C. Public Laws, 1933, Ch. 562. The change in philosophy from basically a locally financed school system to a state-financed system actually came in 1931. The Machinery Act of 1931 (Ch. 430) assumed for the state the burden of supporting the constitutional six-month school term, but the equalization fund, to aid counties and districts in operating an additional two months of school, was retained. In the 1933 act the state assumed support of the eight-month school term, adopted a state sales tax in lieu of state ad valorem property taxes to support the system, created the State School Commission to control the spending of state school funds, and abolished all existing school district and local school maintenance taxes for the schools. Thus the 1933 Machinery Act represents the point at which complete state support for operating the public schools was adopted.
24. Federal support varies from one administrative unit to another for several reasons. The primary one is the unit's eligibility for funds. For example, much of the ESEA money is keyed to poverty levels in the unit, and schools with large vocational education programs will receive more money because vocational education is heavily financed by the federal government. Likewise, units with military reservations will receive funds for the operation of their schools under the defense-impacted program which no other unit is eligible to receive. Still another factor is the unit's attitude toward federal funds and whether it actively seeks federal funding for projects it develops for its school system. These are some of the reasons why some school systems receive more federal money for the operation of their schools than do others.
25. BIENNIAL REPORT OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION OF NORTH CAROLINA, 1964–66, 18.
26. Report by John C. Clark, senior vice president in charge of public finance, Wachovia Bank and Trust Company, to the Governor's Study Commission on the Public School System of North Carolina, p. 1, Dec. 22, 1967.
27. See Table 16–II.
28. See ROBERT G. BYRD, COUNTY FINANCE 81 (Institute of Government, 1967).

29. See Bridges v. Charlotte, 221 N.C. 472 (1942), and Harris v. Board of Commissioners, 1 N.C. App. 258 (1968).

30. N.C. CONST. Art. V, § 2.

31. N.C. CONST. Art. IX, § 5.

32. N.C. GEN. STAT. §§ 18–6, –13.

33. N.C. GEN. STAT. § 115–99.

34. N.C. CONST. Art. IX, § 4. Today this source provides no revenue. It is like several other revenue sources provided for in the State Constitution that no longer produce money for the schools. Other examples are the net proceeds of all sales of swamp lands belonging to the state (Art. IX, § 4), net proceeds from the sale of estrays (Art. IX, § 5), and all moneys which are paid for exemption from military duty (Art. IX, § 5).

35. See N.C. GEN. STAT. § 20–141.3.

36. See text at p. 364 *infra*.

37. NORTH CAROLINA PUBLIC SCHOOLS BULLETIN, XXIII (September, 1967).

38. In his book COUNTY FINANCE, Byrd discusses this problem at some length. He resolves the problem of interpretation that arises when the provisions of either law do or do not apply in the following manner:

"To the extent that the provisions of the two laws are not inconsistent, both should be applicable. If any provisions of the two laws are inconsistent, the provision of the law applying specifically to schools should prevail over the general provision of the Fiscal Control Act. When a procedure or requirement is contained in the Fiscal Control Act and the school law contains no provision relating to it, the provision of the Fiscal Control Act should apply unless inconsistent with the general intent of the school law." *Op. cit. supra* note 28 at 210.

39. There is one exception. If the boundaries of a city administrative unit are coterminous or wholly within the corporate limits of a town or city, the governing body of the city may be the tax-levying authority. See N.C. GEN. STAT. § 115–9.

40. North Carolina is one of only four states in the country in which all school boards are fiscally dependent upon another governmental body. See PUBLIC SCHOOL SYSTEMS IN 1966–67, U.S. CENSUS OF GOVERNMENTS 1967, CG–P–3. See also NEA RESEARCH MEMO 1966–19, FISCAL DEPENDENCE AND INDEPENDENCE OF LOCAL SCHOOL SYSTEMS.

41. For a fairly complete listing of the statutory authority for these responsibilities, see BYRD, *op. cit. supra* note 28 at 212–13, fns. 6, 7, 8, 9, and 10.

42. N.C. CONST. Art. IX, § 3.

43. N.C. GEN. STAT. § 115–80 (b).

44. BYRD, *op. cit. supra* note 28.

45. The North Carolina Constitution provides in Article IV, § 2, that the General Assembly shall provide for "a general and uniform system of public schools . . . ," and G.S. 115–2 provides that the "general supervision and administration of the free public school system shall be vested in the State Board of Education. . . ." The educational system provided by these two bodies must be accepted and provided for by the local school board and the board of county commissioners.

46. Whiteville City Administrative Unit v. Columbus County Board of County Commissioners, 251 N.C. 826, 830, 112 S.E.2d 539, 542–43 (1959).

47. N.C. GEN. STAT. § 115–80 (a).

48. N.C. GEN. STAT. § 115–78.

49. See N.C. GEN. STAT. § 115–79 for a listing of those items paid for from state appropriation.

50. See BYRD, *op. cit. supra* note 28 at 222–25.

51. See Harris v. Board of Commissioners, 274 N.C. 343 (1968). The statute, G.S. 115–80 (a) was challenged after the Washington County Board of Commissioners levied a 15-cent tax to supplement teachers' salaries. The commissioners did not submit the question of the additional tax levy to the voters of the county. The action was promptly challenged as unconstitutional on the basis that the public schools are not a "necessary expense" within the meaning of Article VII, § 6 of the State Constitution, and therefore the statute authorizing a supplemental school tax without voter approval is unconstitutional. The Washington County Superior Court rejected this argument, finding the statute to be constitutional. The Court of Appeals upheld the act [1 N.C. App. 258 (1968)], and the Supreme Court affirmed that decision. In so doing they held that the General Assembly's constitutional duty to provide for "a general and uniform system of public schools" empowers it to authorize boards of county commissioners to levy taxes for school support without voter approval. Thus the necessary expense restriction was avoided by holding that it did not apply so long as the school board and board of county

commissioners were carrying out the General Assembly's responsibility for maintaining the state system of public schools.

52. N.C. GEN. STAT. § 115–80 (c).
53. N.C. CONST., Art. V, § 4.
54. Letter to Richard Long, March 8, 1963.
55. N.C. GEN. STAT. § 115–80 (d).
56. N.C. GEN. STAT. § 153–114 (4).
57. N.C. GEN. STAT. § 115–117.
58. N.C. GEN. STAT. §§ 115–80 (b), –124.
59. N.C. GEN. STAT. § 115–86.
60. N.C. GEN. STAT. § 115–116 (a).
61. N.C. GEN. STAT. § 115–80 (d).
62. The statute speaks only of an appeal to the Supreme Court. Presumably an appeal to the new state Court of Appeals would also be a basis for the judge to require a tax levy if the delay of the appeal would "result in a delay beyond a reasonable limit for levying the taxes for the year. . . ." See N.C. GEN. STAT. § 115–88.
63. N.C. GEN. STAT. §§ 115–80.1 through –80.5. For a discussion of whether the apportionment rule applies to withdrawals from capital reserve funds, see BYRD, *op. cit. supra* note 28 at 232–33.
64. N.C. GEN. STAT. § 115–89.
65. See N.C. GEN. STAT. §§ 115–84, –90 for the law governing disbursement of funds. See also N.C. GEN. STAT. § 115–84.
66. N.C. GEN. STAT. § 115–60.
67. N.C. GEN. STAT. § 115–62. See BYRD, *op. cit. supra* note 28.
68. N.C. GEN. STAT. § 115–61.
69. N.C. GEN. STAT. § 115–100.
70. N.C. GEN. STAT. § 115–93.
71. N.C. GEN. STAT. § 115–97.
72. N.C. GEN. STAT. § 115A–19 (a).
73. N.C. GEN. STAT. § 115A–20 (a).
74. N.C. GEN. STAT. § 115A–6.
75. N.C. GEN. STAT. § 115A–28 (b).